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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,576	07/12/2001	Masaru Kogure	32405W084	3624
7590 03/23/2007 Smith, Gambrell & Russell, LLP Beveridge, DeGrandi, Weilacher & Young Intellectual Property Group 1850 M Street, N.W. (Suite 800) Washington, DC 20036			EXAMINER CZEKAJ, DAVID J	
			ART UNIT	PAPER NUMBER
			2621	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/23/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/902,576	Applicant(s) KOGURE ET AL.	
	Examiner Dave Czekaj	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-9, 12-15, 17, 27 and 28 is/are allowed.
- 6) ☒ Claim(s) 10, 11, 16, 18-23, 25, 26, 29 and 30 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 3-15, 17, and 30 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claim 13 is objected to because of the following informalities: Claim 13 has a requirement means for determining whether one or more fail safe interruption criteria is present and later states determining that fail safe mode activation is appropriate only if all of criteria a to f are satisfied. The examiner suggests changing *one or more* to all. Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10, 19-22, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudoh (5243663) in view of Harada et al. (6636257), (hereinafter referred to as "Harada") in further view of Kogure et al. (09/902576), (hereinafter referred to as "Kogure").

Regarding claim 10, Kudoh discloses an apparatus that relates to a vehicle detecting apparatus (Kudoh: column 1, lines 9-11). This apparatus comprises "a camera device for taking an image of a view in front" (Kudoh:

figures 1-2), "a calculator for calculating luminance data on the image" (Kudoh: figure 2, wherein the calculator is the road surface luminance detector), and "a determination section for determining whether there is a fail occurring on the monitoring system based on the luminance data" (Kudoh: column 4, lines 65-68, wherein the monitoring failure is the failure in revealing the characteristic of the vehicle). However, this apparatus lacks the fail-safe measures and luminance center calculation as claimed. Harada teaches that prior art vehicle control systems need highly sophisticated processing algorithms (Harada: column 2, lines 20-35). To help alleviate this problem, Harada discloses "taking fail-safe measures if the fail is occurring" (Harada: column 8, line 64 – column 9, line 3, wherein the fail-safe measure is preventing the steering wheel from being turned based on the detection of the luminance or brightness of another vehicle).

Kogure, in the specification on page 2 and illustrated in figure 3 teach calculating a luminance center corresponding to a horizontal position on the image at which luminance are converged, and determining the fail by evaluating the horizontal luminance distribution on the image based on the luminance center. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Kudoh, add the alteration devices taught by Harada, and add the calculations taught by Kogure in order to obtain an apparatus that operates more efficiently by reducing the complex operations needed to control a vehicle.

Regarding claims 19-22, Kudoh discloses "determining whether a fail-safe interruption criteria is present based on two of the following: that an upper luminance saturation factor is larger than a lower saturation factor" (Kudoh: column 3, lines 35-64).

Regarding claim 30, Kudoh in view of Harada disclose "an image recognition device which receives image data from the camera device" (Kudoh: figure 2, wherein the recognition device is the vehicle existence judging region), a state alteration device which alters a vehicle condition based on image data criteria" (Harada: column 8, line 64 – column 9, line 3, wherein the alteration is preventing the steering wheel from being turned based on the detection of the luminance or brightness of another vehicle), and "preventing the vehicle alteration device from activating an image recognition based vehicle control change" (Harada: column 8, line 64 – column 9, line 3, wherein the steering wheel is prevented from being turned based on the detection of the luminance or brightness of another vehicle).

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kudoh (5243663) in view of Harada et al. (6636257), (hereinafter referred to as "Harada") in further view of Kogure et al. (09/902576), (hereinafter referred to as "Kogure") in further view of Hibbard et al. (6013911), (hereinafter referred to as "Hibbard").

Regarding claim 11, note the examiners rejection for claim 10, and in addition, claim 11 differs from claim 10 in that claim 11 further requires calculating the luminance moment. Hibbard teaches "calculating a luminance

moment indicating the horizontal luminance distribution based on the luminance center" allows for correct centering of the image on the screen (Hibbard: column 8, lines 11-24. The examiner notes that calculating a luminance center is a well known pixel manipulation technique). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the calculations taught by Hibbard in order to correctly display the image to the user.

4. Claims 16, 18, 23, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudoh (5243663) in view of Harada et al. (6636257), (hereinafter referred to as "Harada") in further view of Kogure et al. (09/902576), (hereinafter referred to as "Kogure") in further view of Shimoura et al. (6285393), (hereinafter referred to as "Shimoura").

Regarding claims 16 and 18, note the examiners rejection for claim 10, and in addition, claims 15 and 18 differ from claim 10 in that claims 15 and 18 further require precluding an activity, the activity being a vehicle slow down change and preventing the warning system from activating. Shimoura teaches that it is well known to prevent steering or braking (slow down change) if a vehicle abnormally approaches another vehicle (Shimoura: column 1, lines 25-30). The examiner notes that control would not be passed back to the user until an indication, or statement, indicating the area safe is received. The examiner further notes that once vehicle control is take away from the user, the warning system will de-activate until control is given back to the user. Therefore, it would

have been obvious to one having ordinary skill in the art at the time the invention was made to implement the prevention of the slow down change in order to help prevent two vehicles from colliding together.

Regarding claim 23, note the examiners rejection for claim 22 and in addition Shimoura discloses "a number of the calculation of the distance data is smaller than a reference number" (Shimoura: figures 26A, 26B, and 27).

Regarding claim 25, Kudoh in view of Harada in view of Shimomura disclose "preventing the fail safe mode from activating if a vehicle is recognized ahead or a distance to a vehicle is detected" (Harada: column 8, line 64 – column 9, line 3; Shimomura: figure 1A).

Regarding claim 29, note the rejections for claims 16 and 18. In addition, Shimoura discloses preventing a vehicle control change until conditions are acceptable (Shimoura: column 1, lines 25-30, wherein if the condition was acceptable, the control would not be taken away from the user).

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kudoh (5243663) in view of Harada et al. (6636257), (hereinafter referred to as "Harada") in further view of Kogure et al. (09/902576), (hereinafter referred to as "Kogure") in further view of Khattak (4899296).

Regarding claim 26, note the examiners rejection for claim 13, and in addition, claim 26 differs from claim 13 in that claim 26 further requires preventing the fail safe mode based on camera shutter speed. Khattak teaches that a correct shutter speed must be chosen that provides unblurred or

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geographically undisplaced pixel information (Khattak: column 7, lines 36-45).

The examiner notes that the fail-safe mode would need to be prevented/activated based on the blurriness of the camera image. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the shutter speed control taught by Khattak in order to prevent a collision based on an unclear image.

Allowable Subject Matter

Claims 3-9,12-15,17,27 and 28 are allowed.

Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Czekaj whose telephone number is (571) 272-7327. The examiner can normally be reached on Mon-Thurs and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571) 272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DJC

Mehrdad Dastouri
MEHRDAD DASTOURI
SUPERVISORY PATENT EXAMINER
TC 2600